UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

JESSICA WICKETT,	:	Civil Action No.:
	:	1:24-cv-1869
Plaintiff,	:	
versus	:	Thursday, December 19, 2024
	:	Alexandria, Virginia
VENTURE GLOBAL LNG, INC.,	:	
	:	Pages 1-21
Defendant.	:	

The above-entitled motions hearing was heard before the Honorable Leonie M. Brinkema, United States District Judge. This proceeding commenced at 10:36 a.m.

A P P E A R A N C E S:

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

P R O C E E D I N G S

THE DEPUTY CLERK: Civil Action 1:24-cv-1869, Jessica Wickett v. Venture Global LNG Inc.

Will counsel please note their appearance for the record, first for the plaintiff.

MR. DYSON: Good morning, Your Honor. Michael Dyson and Gerry Silver on behalf of the plaintiff, Jessica Wickett, who is with us at counsel table.

THE COURT: All right.

MR. SCARBOROUGH: Good morning, Your Honor. Ryan Scarborough from Williams & Connolly. With me are my colleagues, Elaine Horn and Emily Pistilli, for Venture Global, the defendant.

THE COURT: Good morning.

I guess who's going to be the main spokesperson? Ms. Horn, are you?

MS. HORN: Yes.

THE COURT: If you would -- at the lectern.

You know, this is not the first of these cases we've seen, and I suspect there are several more still in the pipeline.

Doesn't Judge Trenga have a case as well?

MS. HORN: There is a case before Judge Trenga that was filed a few days after this one.

THE COURT: Yeah. And I think probably -- the

local practice that we have in Alexandria is that the first judge who gets a case, if there are significantly related cases of basically overlapping issues, often it goes then to that first judge who got it. So Judge Trenga's case will most likely be coming to us as well.

So since I'm going to see a bunch of these cases, you know, my first question is, have you all tried to work these out? Because the cases I've had previously, I believe all those settled. So I was sort of curious as to why they're not settling now.

MS. HORN: So, Your Honor, the cases that you referenced before, they were in a little bit different posture. They concerned options and documentation that occurred prior to 2017, and these cases involve options and documentation after 2017, so the legal issues are a little bit different.

THE COURT: Yeah, but the first two stock option packages or agreements were 2014 and 2016. So I'm not sure. I know in 2017, there were amendments and changes made, but still the two seminal documents that are at issue in this case are 2014 and 2016.

MS. HORN: And the issue in the prior set of cases was whether or not those plaintiffs had agreed to the amendments in 2017. Here, the plaintiff signed the documents in 2017, and so our argument or position is that

she agreed to the amendments, so those amendments apply. And we --

THE COURT: And the argument that's being made is that there's no real consideration for that.

What's the consideration for the 2017 agreement?

MS. HORN: There are several elements of consideration. First, that particular -- the RC agreement has an arbitration provision. There is a mutual agreement to arbitrate, and under Fourth Circuit law, Delaware law, Virginia law, any law that would apply here, a mutual agreement to arbitrate is, itself, consideration for that. So this case --

THE COURT: What's the advantage to a plaintiff in arbitration when it usually requires that they pay half the costs? Isn't that still part of the arbitration that you have in yours?

MS. HORN: No. This arbitration specifies JAMS, and it specifies the JAMS employment rules. And under the JAMS employment rules, the plaintiff had belief they may file -- they have to pay a fee of $250, but everything after that is -- the costs are borne by the employer.

THE COURT: Okay. That's a slight advantage. Yep.

So you would consider that as one. What is the other issue that you think is consideration?

MS. HORN: Also under the law of any jurisdiction that applies here, continued employment -- the fact of continued employment after these agreements were reached constitutes consideration, not -- I know there's been a theory that there has to be a promise of continued employment, but it's actually just the fact that she continued to work under the agreement for seven years. That is consideration. And that she continued to be employed for seven years. That is consideration.

So really there's three things. There's the mutual agreement to arbitrate. There is the fact that in the actual RCA, the very beginning, the preamble, it says that there was reasonable consideration that's being expressly acknowledged by the plaintiff, which she signed. And then third, there's the continued seven years of employment. So all of that goes to a sufficient consideration for this agreement.

THE COURT: All right. Well, we have three motions before us.

Now, the motion to compel arbitration we probably should address first, because if that were to be successful, depending upon how far that goes, that would resolve the case at this point. So let me have the plaintiff respond to that motion.

MR. SILVER: Good morning, Your Honor.

Sure, this case is exactly the same as some of the cases that we filed. If Your Honor recalls, we had a case that a widow signed -- or her husband signed the --

THE COURT: I think I had three cases, didn't I, last year?

MR. SILVER: Yeah. It was three cases. So they're exactly the same about whether they acted in bad faith in refusing to allow option holders that were at the company to exercise. So it's the same as those cases. And we would definitely be willing to engage in any kind of settlement before a magistrate or anything like that, but we haven't really gotten anywhere on that. So --

THE COURT: Have you made a demand on the defendant, a specific demand? Because, you know, settlements normally don't result in 100 percent -- you know, 100 cents on the dollar.

MR. SILVER: Sure.

THE COURT: Yeah.

MR. SILVER: Well, my client, Ms. Wickett, did make a demand before filing the complaint, and they just got nowhere with that, basically. So -- and then so we filed a complaint, and since then we've just gotten nowhere on any kind of settlement talks whatever. So we would be open to it.

But, in any event, with regard to the -- with

regard to this RCA, the stated consideration -- they knew they had to give consideration for that, and the stated consideration were the options that she already had. As Your Honor knows, Ms. Wickett already had the options in 2014 and 2016.

With regard to their argument about a condition of the employment or continued employment being a consideration, in this case, Ms. Wickett had already worked there for three years and already had substantial rights working there. And, in this case, the contract actually says -- well, first of all, they didn't tell her, oh, you have to sign this or you'll be fired; or if you come here, you'll get to stay for a little bit. There was nothing like that. Like in all the cases they cite, there is something like this.

But, in this case, this is even less consideration, if that's possible, because in this one, it specifically says there is no promise of continued employment in this agreement. So they're basically telling her that you're getting nothing for this in the agreement itself. And no case they cite has any provision that basically says there is expressly not a promise of continued employment. And there has to be consideration at the time that the agreement is signed, and there was none at the time, and there was no promise.

The second -- after staying there for three years, working with the company, building it up, she could have signed this agreement, and then they could have just terminated her as soon as she handed it over to them. So there was absolutely no consideration at that time.

And with regard to the -- with regard to the arbitration provision, it's exactly what you say. Ms. Wickett's been at the company for three years, she had the right at that time for the public -- for a public hearing, to have her disputes be heard in public, to be able to get all of the discovery that you could get in a court, and to have a right for a jury, and they took that away from her. And we all know that companies do that for their own benefit and not for the benefit of the employee. They insisted on it, they got her to sign it. They're trying to enforce it now because it's to her benefit. So there's no consideration. Consideration has to be a benefit to the one person or a detriment to another person at the request of Ms. Wickett. And she didn't request it, she didn't want it, she doesn't want it now. So there's no benefit to her and there's no detriment to them. And so for all these reasons, there's no consideration for that.

THE COURT: Also, in my view as I read the document, I'm not sure that it would even apply to the issue about the stock options.

MR. SILVER: Right. That's what I was going to get to next.

THE COURT: That's really the biggest problem.

MR. SILVER: Sorry. I don't want to cut you off.

THE COURT: Go ahead.

MR. SILVER: But, yes, it's outside the scope. It's a very specific arbitration provision, and it only relates to the disputes related to this restrictive covenant agreement, and that this stock is totally different.

THE COURT: I think that's a strong argument.

I'll let Ms. Horn respond to that.

MS. HORN: So, Your Honor, going back to the actual arbitration provision which commits --

THE COURT: No. No. I'm sorry. Go ahead.

MS. HORN: -- which commits the arbitration to JAMS, pursuant to the JAMS rule. Under the precedent of the Fourth Circuit and this Court, when you have a designated forum, such as JAMS, where you've specified the rules and those rules provide that the arbitrator can decide issues of the scope of the arbitration, the arbitrability, that issue is delegated to the arbitrator. We have exactly the kind of provision here, it has specified JAMS as a dispute resolution arbitrator, and it specifically references the JAMS rules, which provide that the arbitrator can decide the scope.

So to the extent there is a dispute over whether or not disputes about stock options belong in the -- you know, follow within the penumbra of the arbitration provision, that should be decided by the arbitrator.

But I would also point out that, again, in that same preamble for the restrictive covenant agreement, it specifically says: For good and valuable consideration, including the company stock options granted to employee as of the effective date under the company's 2014 stock option plan. It specifically references the stock option plan and the stock options that are in dispute right now.

THE COURT: I don't buy the argument, so I'm going to deny the motion to arbitrate.

I find, Number 1, the issue about consideration is very, very thin; Number 2, the way I read that document, the scope of the arbitration has to do specifically with the non-compete and that sort of stuff, and it doesn't have anything to do with the stock options. So I'm denying that motion. And that takes care of that preliminary issue.

Then we have this interesting issue about the motion to dismiss for lack of subject matter jurisdiction, because this case is brought under diversity, and there is an issue about whether the plaintiff was fully diverse from the defendant at the time the complaint was filed, which is the only relevant time we looked at.

I can't resolve that issue on the record that's before me right now, so what I'm going to do is -- I'm not bifurcating discovery, all right, but I will recommend that you all try to get that issue addressed as early as possible. There's no benefit to the plaintiff. If this Court does not have subject matter jurisdiction, then, as you know, at any point that issue can be raised and make any judgment, if there were to be a judgment, a nullity. So you might as well get that one fleshed out quickly. At the same time, I'm not going to slow down the overall discovery process in the case.

So I'm going to deny the motion to dismiss for lack of subject matter jurisdiction without prejudice to it being raised again if, after the discovery is, you know, sufficiently done, one can see more clearly whether, at the time the complaint was filed, the plaintiff was, in fact, a resident of Virginia or the District of Columbia. All right.

The third motion that's before us is a motion to dismiss for failure to state a claim, and that's one that I'll hear a little bit of argument about.

So, Ms. Horn, you're there, you might as well. It's your motion.

MS. HORN: Certainly.

On the 12(b)(6) motion, Ms. Wickett asserted four

different claims, two contract claims, express and implied, one claim under the Virginia Wage Payment Act, and then a final retaliatory discharge claim.

On the express and implied contract claims, the alleged breach has to do with whether or not she was allowed to exercise the stock options. She did receive the stock options. So, from an express breach perspective, there was no provision that was breached. She received her options; the question is whether or not she was allowed to exercise them.

In terms of the implied breach of the covenant of the good faith and fair dealing, under the stock option plan, there was a New York choice of law provision. And under New York law where you're dealing with an at-will employment context, any claims that are based on the implied covenant do not -- cannot be brought forward under New York law. They just don't exist.

And we cited multiple cases in our brief regarding other instances where people were alleging implied covenant-type claims based on equity compensation or stock buybacks or what have you, and none of those cases were allowed to proceed because that cause of action is not recognized in New York.

On the Virginia Wage Payment Act claim, that is a statutory claim. If you read the text of the statute, it

does not encompass stock options or stock; it encompasses things like wages, bonuses, cash compensation. So it would be quite the stretch to include stock options. But even if you were to try to stretch it to include stock options, again, Ms. Wickett did receive stock options; the question is whether or not the restrictions that followed those, whether or not they were applied properly.

And then on the retaliatory discharge claim, under Virginia law for an at-will employee to bring a retaliatory discharge claim, there needs to have been an allegation of a breach of either a federal or state statute made before the discharge, and that didn't happen here.

The only allegation that's in the complaint about what was made was there was a complaint that it was unfair to not allow her to exercise her options. But something being unfair is not a federal statute, it's not a state statute, and it will not support a cause of action for retaliatory discharge in Virginia.

THE COURT: All right. Counsel.

MR. SILVER: Okay. With regard to the first claim, that's a breach of the 2014 and 2016 stock option agreements where Ms. Wickett was granted options with no consent requirement whatsoever. And she tried to exercise the 2014 options, and she was denied that because she was told there was a consent requirement when there was none.

And the reason they claimed that there was a consent requirement is because of the 2017 agreements that she signed. But like the RCA, there's absolutely no consideration for those because she already had the options that were the purported consideration. So the consent requirement in there is unenforceable as a matter of law.

And some of the arguments that they make are just wrong. Like, they argue for the first time that under New York law, just signing the agreement is enough. First of all, they make that argument for the first time on reply, so I think it should be rejected for that reason alone.

But, in any event, it's clear that New York law shouldn't even apply here, because under Virginia law or New York law, you don't apply another state's law based on the governing law provision if there's not sufficient contacts with the state, if there's not sufficient contacts, if there's not a sufficient relation. And, here, Ms. Wickett was in D.C., worked in Virginia, the company is in Virginia, they have plants in Louisiana. It has nothing whatsoever to do with New York, so that doesn't apply.

And then also -- and, in any event, this isn't a modification of a contract; this is a -- these 2017 agreements were like brand-new contracts. She had like a one letter grant of options with, like, no real terms other than she had options, and she could exercise them within ten

years. This is, like, an 11-, 15-page agreement with hundreds of terms.

So, in any event, the bottom line is the 2014 and 2016 agreement we state a claim that there was a contract, she had options, the right to exercise them with ten years, she tried to exercise the 2014 options, they didn't let her do it for a consent requirement that's not in that contract. So we think, at the very least, we state a claim at this juncture for breach of those contracts.

With regard to the second claim, which is the breach of the implied covenant of good faith under the 2017 agreements, Delaware law is clear -- Delaware law governs under those agreements, and it's clear that there's an implied covenant of good faith with respect to options specifically, that it's -- an option involves an act of future discretion, and therefore there's an implied covenant of good faith.

The cases they cite do not apply because they only relate to when somebody's trying to get around the whole at-will employment by saying, oh, wait, but you're firing me in bad faith, you can't do that. Like, that you can't do because then you're sort of undermining the whole concept of at will where somebody could be fired for any reason or no reason.

But that's not the claim here. We're not claiming

they breached the implied covenant of good faith by terminating Ms. Wickett; we're saying that they breached the implied covenant of good faith for her as an option holder when she tried to exercise options, which is a future act of discretion. So we believe that we state a claim there under any state's law on that.

With regard to the violation of the Wage Payment Act -- and Your Honor was sort of referring to this a little bit earlier, it sounds like in the other case, but although the statute itself doesn't define wages, the Virginia code statute does define wages to include any compensation that's not cash-based. And we cite the *Blanchard* case that specifically says that you should look to that statute in Virginia law to determine wages, and we just conclude -- include non-cash compensations, such as stock. And this *Campbell* case that recently came out said the Wage Payment Act should be construed as broadly as possible, and includes all compensation for services.

Here, the action's not for the options. What we're saying is is that Ms. Wickett was deprived of the stock, which was a key component of her compensation. And even in our complaint, Exhibit A, when she was granted the options, the company actually said that the options and the stock were a key part of her compensation. They gave it to -- in appreciation for the quality of your work and to

align our interests, and as a part of your compensation, we are pleased to offer ten-year options equivalent to 50 of our underlying Class A common shares.

So both the options and then the shares were a significant part of her compensation package. I mean, the reason she came to the company in the first place was the chance of growth that actually happened. And so, therefore, she was deprived of wages, as defined in the statute, and compensation for services, and, therefore, she has a claim that she was deprived of wages under the Act, and we think that claim should stand.

And then with regard to the wrongful termination, she expressly stated not just that it was unfair, but that she was cheated and deprived of the stock. And being deprived of the stock is being deprived of wages. So she had a reasonable good-faith belief that she was being deprived of compensation under the law. And she -- and there's no -- here we allege the dates. The dates are very clear. We allege that she said she was cheated out of the compensation to the two founders, and she was fired within two business days of that happening. I mean, it couldn't be more obvious that she was fired for complaining about not being able to exercise her stock.

So, at this juncture, we submit that we clearly state a claim for retaliation for complaining about a

violation of law.

THE COURT: All right. Thank you.

MR. SILVER: Thank you.

THE COURT: Ms. Horn, do you want to respond? In particular, respond to the last issue.

MS. HORN: On the retaliatory discharge issue?

THE COURT: On the retaliation, yeah.

MS. HORN: Yes.

So, again, it's not just that you complained about being fired; you have to complain about some violation of a state or federal law that occurred, and then you were retaliated against and fired for making that complaint.

There was no complaint about any federal or state law that was being violated. That didn't come up until after she was already terminated, so it can't be the basis for a retaliation claim if it didn't come up until after the termination.

THE COURT: All right. What I'm going to do in this case, because I am satisfied that Counts 1, 2 and 3 are adequately alleged and pled, they're going to go forward. So the motion to dismiss is denied as to those three counts.

But in terms of the wrongful termination, I agree with defense counsel that there has to be an explicit, clear invocation of the fact that one is complaining about the violation of federal or state law. And just saying that I'm

not getting an opportunity to exercise my stock options, it's really complaining about the breach of contract, and I'm satisfied, therefore, that Count 4 should be dismissed, and so we'll dismiss Count 4. The other three are going to go forward.

And, again, I don't believe we've issued a scheduling order in this case, so one is going to be issued today, which means, again, this is the most economically wise time to try to settle this case. If this case survives motions -- and I suspect it probably will -- it will not have much jury appeal, in my view, for the defendant. You have a young woman who I believe just out of school went to work for a startup. The startup just took off and it made a fortune. I mean, I think billions. A lot of money was obtained.

And this was, you know, a common thing. Work equity. I suspect that when we get into the discovery, we'll probably see that the salary she was being paid probably was not as high as others might have gotten at that time. A lot of people, especially in this part of the country, you know, work for these startup companies for much less cash than they could get as a regular salary because they're getting stock options or some concept of, you know, benefiting from the overall success of the company. And she was there for, what, ten years? That's a long time. I

think the plaintiff will have a lot of jury appeal. And I don't know the grounds upon which or for which she was terminated. Even though the retaliation claim may not be a specific claim in the lawsuit, it certainly would be within the scope of the issues to be presented to a jury in determining, if they do find liability, what the appropriate damages should be. So I think the defendant really should give a hard look at this case, as well as the others if they're similar.

You know, when you make a promise to give people stock options, especially in those first two agreements where there were no restrictions, and then, after the fact, add these restrictions without there being a really clear consideration, some true benefit to the plaintiff for adding those restrictions, it doesn't look good.

So this is the time to -- Judge Vaala is the -- I'm sorry, no. Judge Fitzpatrick is the magistrate judge. He's a very, very good mediator. You certainly can use private mediation services as well. But that would be my strong recommendation to you all to do it sooner than later, but the scheduling order will issue today.

Thank you.

MR. DYSON: Thank you, Your Honor.

MR. SILVER: Thank you, Your Honor.

(Proceedings adjourned at 10:59 a.m.)

I certify that the foregoing is a true and accurate transcription of my stenographic notes.

Stephanie Austin

Stephanie M. Austin, RPR, CRR